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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,056	11/26/2001	Robert F. Cruickshank III	24359-014	9528

7590 02/18/2005

MINTZ, LEVIN, COHN, FERRIS,
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One Financial Center
Boston, MA 02111

EXAMINER

PATEL, DHAIRYA A

ART UNIT	PAPER NUMBER
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2151

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,056

Applicant(s)

CRUICKSHANK ET AL.

Examiner

Dhairya A Patel

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-32 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Application # 09/995,056 was filed on 11/26/2001. Claims 1-32 are subject to examination.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-23, drawn to a computer program product comprising computer-executable instructions for causing a computer to provide a hierarchical display of network performance, the hierarchical display including a first level with first data indicative of network operation and a second level with second data indicative of a plurality of issues comprising the first level of network performance; wherein the second level includes multiple issues that contain a third level with third data indicative of network issues comprising at least some of the secondary level issues, classified in class 709, subclass 224.
 - II. Claims 24-32, drawn to a computer program product comprising computer-executable instructions for causing a computer to obtain indicia of cumulative amounts of time that network elements of at least a desired portion of a broadband network were considered at corresponding qualities of network performance during a designated time frame, classified in class 709, subclass 226.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I, II and III are unrelated. In the instant case the different inventions as group I claims 1-23 are directed to a computer program product comprising computer-executable instructions for causing a computer to provide a hierarchical display of network performance, the hierarchical display including a first level with first data indicative of network operation and a second level with second data indicative of a plurality of issues comprising the first level of network performance; wherein the second level includes multiple issues that contain a third level with third data indicative of network issues comprising at least some of the secondary level issues lacking to obtain indicia of cumulative amounts of time that network elements of at least a desired portion of a broadband network were considered at corresponding qualities of network performance during a designated time frame. Group II claims 24-32 are directed to a computer program product comprising computer-executable instructions for causing a computer to obtain indicia of cumulative amounts of time that network elements of at least a desired portion of a broadband network were considered at corresponding qualities of network performance during a designated time frame lacking to provide a hierarchical display of network performance, the hierarchical display including a first level with first data indicative of network operation and a second level with second data indicative of a plurality of issues comprising the first level of network performance; wherein the second level includes multiple issues that contain a third level with third data indicative of network issues comprising at least some of the secondary level issues.

3. These inventions are distinct for the reasons given above, and the search

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required for each Group is different and not co-extensive for examination purpose. For example, the searches for the four inventions would not be co-extensive because these groups would require different searches on PTO's classification class and subclass as following.

a) The Group I search (claims 1-23) would require use of class 709 subclass 224 (not require in invention II).

b) The Group II search (claims 24-32) would require use of class 709 subclass 226 (not require in invention I).

4. A telephone call was made to Mr. Shane Hunter on February 11, 2005 to address a possibility of restriction requirement, but did not result in an oral election being made.

5. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dhairya A Patel whose telephone number is (571) 272-4066. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DAP


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER